

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE  
VARIANCE PERMIT DENIED BY  
THE CITY OF NORMANDY PARK TO  
RUBIN SALANT  
RUBIN SALANT,  
Appellant,  
v.  
CITY OF NORMANDY PARK,  
Respondent.

SHB No. 79-22

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal from the denial of a variance, came before the Shorelines Hearings Board, David Akana, Chairman, Chris Smith, Robert S. Derrick and James S. Williams, at a hearing in Tacoma on August 15, 1979. Nancy Curington presided.

Appellant was represented by his attorney, Peter L. Buck; respondent was represented by Robert L. McAdams, its City Attorney.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes

1 these

2 FINDINGS OF FACT

3 I

4 Appellant Rubin Salant owns real property on Puget Sound within  
5 the jurisdiction of the City of Normandy park (hereinafter "City")  
6 upon which he built his single family residence in 1974. The  
7 property is adjacent to a parking area and boat ramp of a private  
8 community beach which is owned by property owners in the development  
9 of which appellant is also a part. The community  
10 beach is served by a road and cul-de-sac which is located along one  
11 side of appellant's boundary. A community pool is located about one  
12 block away from appellant's residence.

13 II

14 Appellant and his family knew when they first purchased the  
15 property that a community beach (Lot A) was located on one side  
16 of their lot but did not anticipate the impacts that would  
17 result from the use of the beach. Appellant has since noted increased  
18 dust and noise from Lot A and has suffered a loss of privacy in  
19 the use of his private residence.

20 III

21 Appellant believed that locating a pool enclosed in a building  
22 between Lot A and his property would mitigate the impact of activities  
23 on Lot A. After receiving approval from the restrictive covenant  
24 committee of his development, he submitted a building permit application  
25 for a pool and pool house to the City, together with a sketch of his pool  
26 showing a one-line building enclosure. He learned at that time that his

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1 proposal was within the 20 foot zoning code setback requirement from the  
2 cul-de-sac. At appellant's insistence, a building permit for a pool  
3 located outside the 20 foot setback of the cul-de-sac was issued. The  
4 pool enclosure was denied. Thereafter, appellant constructed a  
5 swimming pool 22 feet from the cul-de-sac and within the 25 foot  
6 shoreline setback from the ordinary high water mark (OHWM).  
7 Appellant was not informed by the City of the 25 foot setback from the OHWM  
8 under the City's shoreline master program (SMP) at this time.

#### 9 IV

10 On October 19, 1979, appellant was granted a variance from the  
11 zoning ordinance to construct a building 15 feet from the cul-de-sac.  
12 At the meeting appellant realized that the building was also subject to  
a 25 foot setback requirement from the OHWM under the SMP. Because  
14 the building would be located approximately five feet from the OHWM,  
15 appellant then requested a shoreline variance from the 25 foot requirement  
16 imposed by the SMP. The request was denied from which followed  
17 this appeal.

#### 18 V

19 Any Finding of Fact which should be deemed a Conclusion of  
20 Law is hereby adopted as such.

21 From these Findings the Board comes to these

#### 22 CONCLUSIONS OF LAW

#### 23 I

24 The variance request is tested for compliance with the variance  
25 criteria of the SMP and the Department of Ecology (DOE) regulations.

27 FINAL FINDINGS OF FACT,  
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II

The City's SMP, Section 16.20.150, provides that "no building shall be located closer than twenty-five feet to the high-water mark," except for boathouses.

The SMP, Section 16.36.030, requires that an applicant for a variance show that the following requirements are met:

- (1) There are conditions or circumstances involved with the particular project that make strict application of their regulations unnecessary [sic] or unreasonable for the applicant's proposal;
- (2) The specific provision or provisions to be relaxed clearly did not foresee or consider the particular situation the applicant is facing;
- (3) Granting of the variance(s) will not violate, abrogate, or ignore the goals, policies or individual environment purposes spelled out in the master program;
- (4) No other applicable regulation will be violated, abrogated, or ignored;
- (5) The public health, safety, and welfare will not be adversely affected;
- (6) The proposed project will be compatible with the surrounding uses, structure and environment.

The shoreline master program provides that the failure to meet any of the requirements will result in denial of the variance. SMP, Section 16.36.030.

III

There are no disputed issues with respect to Sections 16.36.030 (4 and 5) of the SMP. Exhibit A-3.

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1 With respect to Section 16.36.030(1), there are no conditions  
2 or circumstances involved with the pool building which makes the  
3 strict enforcement of the 25 foot setback from the OHWM unnecessary  
4 or unreasonable. Appellant divided one project into two distinct  
5 projects for the purposes of permit applications in order to expedite  
6 his goal. The permits were not assured. However, his success  
7 in obtaining a building permit for the pool without the building  
8 enclosure (which was denied) does not form the basis  
9 of a condition or circumstance which could later demonstrate that  
10 the setback requirement was unnecessary or unreasonable. Similarly,  
11 the pool location next to Lot A and the attendant dust, noise and  
12 view of the users therefrom is not sufficient reason to vary from the  
25 foot building setback. The dust created on the traveled area  
14 in the community lot could be suppressed<sup>1</sup>. The granting of a variance  
15 from the 25 foot setback requirement of the SMP will not suppress the  
16 dust from Lot A.

17 Appellant does not meet the requirement, Section 16.36.  
18 030(2). The 25 foot building setback requirement sought to be  
19 relaxed clearly foresaw that no buildings other than boathouses  
20 would be located within 25 feet of the OHWM. Appellant's particular  
21 situation resulted from dividing his project into two discrete  
22 parts. His situation may not have been foreseen when establishing  
23 the setback requirement but is not, in any event, the type of situation  
24

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25 1. Of passing interest, the Puget Sound Air Pollution  
26 Control Agency (created by chapter 70.94 RCW) rules have made  
27 unlawful the maintenance of untreated open areas without taking  
reasonable precautions to prevent particulate matter from becoming  
airborne. Section 9.15(c).

1 which could warrant relaxation of the provision. Even assuming that  
2 the City made mistakes relating to the SMP, which we do not find,  
3 and finding that appellant's property is impacted by the community  
4 lot, these circumstances could not justify a variance for the  
5 project sought.

6 The third provision, Section 16.36.030(3) provides that the  
7 granting of the variance will not violate, abrogate or ignore the  
8 goals, policies or environment purposes set forth in the SMP. Three  
9 structures have been shown to be within the 25 foot building setback  
10 in the area. One structure is a house constructed before passage  
11 of the SMA. The two other structures were constructed as boathouses,  
12 which are permitted within the 25 foot setback. Overall, the City's  
13 setback requirement is substantially unimpaired. The setback  
14 provides protection for views for the neighbors, for appellant,  
15 and for those using the community beach, and furthers the protection  
16 of aesthetic values which is a purpose of the SMA as implemented  
17 by the City's SMP. See RCW 90.58.020. Appellant's building would  
18 encroach upon nearly all of the setback distance, thereby negating  
19 a policy to retain a view corridor along the shoreline.

20 The sixth provision, Section 16.36.030(6), requires that the  
21 proposed project be compatible with surrounding uses, structure and  
22 environment. The proposed project is an accessory use to a  
23 permitted residential use and is compatible with the surrounding  
24 uses which are also residential. However, the proposed project is  
25 not compatible with the surrounding structures and environment  
26 because it would be the only structure of its kind within the 25 foot

1 setback since the establishment of such setback.

2 Appellant has not shown that he can meet all of the requirements  
3 set forth in Section 16.36.030 and the City's action should therefore  
4 be affirmed.

5 III

6 With respect to the DOE criteria<sup>2</sup> for variance requirements,  
7 appellant has shown that the SMP setback requirement does interfere  
8

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9 2. WAC 173-14-150(2) provides:

10 . . . .  
11 Variance permits for development that will be  
12 located landward of the ordinary high water  
13 mark (OHWM), as defined in RCW 90.58.030(2)(b),  
14 except within those areas designated by the  
15 department as marshes, bogs, or swamps pursuant  
16 to chapter 173-22 WAC, may be authorized  
17 provided the applicant can demonstrate all  
18 of the following:

19 (a) That the strict application of the bulk,  
20 dimensional or performance standards set forth  
21 in the applicable master program precludes or  
22 significantly interferes with a reasonable  
23 permitted use of the property.

24 (b) That the hardship described in WAC 173-14-  
25 150(2)(a) above is specifically related to the  
property, and is the result of unique conditions  
such as irregular lot shape, size, or natural  
features and the application of the master  
program, and not, for example, from deed  
restrictions or the applicant's own actions.

(c) That the design of the project will be  
compatible with other permitted activities in  
the area and will not cause adverse effects to  
adjacent properties or the shoreline environment  
designation.

(d) That the variance authorized does not constitute  
a grant of special privilege not enjoyed by the  
other properties in the area, and will be the  
minimum necessary to afford relief.

(e) That the public interest will suffer no  
substantial detrimental effect.

. . . .

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1 with an accessory (i.e., pool enclosure) to a reasonable permitted use of  
2 his property. However, appellant now enjoys and suffers no significant  
3 interference with a reasonable use of his property. (WAC 173-14-150(2)(a))  
4 The specific hardship falling upon appellant as a result of the denial of  
5 a variance for the pool enclosure was the result of his own actions in  
6 constructing his pool within the 25 foot setback and next to Lot A  
7 before he received approval for the enclosure. (WAC 173-14-150(2)(b)).

8 The design of the project is compatible with other permitted  
9 activities in the area as earlier discussed. However, this project would  
10 adversely affect the 25 foot view corridor along the shoreline.  
11 (WAC 173-14-150(2)(c)).

12 If the variance is granted, appellant would be granted a special  
13 privilege to build in an area in which other waterfront owners are  
14 precluded from building. Moreover, we are unconvinced that an  
15 adequate fence and dust and traffic control measures could not be  
16 appropriate solutions. (WAC 173-14-150(2)(d)).

17 In view of the foregoing, it is likely that to grant this  
18 variance request would result in a substantial detriment to the  
19 public interest. The cumulative impact of additional such projects  
20 from property owners along the waterfront would magnify the resulting  
21 detriments, thereby producing a substantial adverse effect on the  
22 shoreline environment.

#### 23 IV

24 The City's action denying the variance application should  
25 be affirmed.

#### 26 V

27 Any Conclusion of Law which should be deemed a Finding of



1 Fact is hereby adopted as such.

2 From these Conclusions the Board enters this

3 ORDER

4 The denial of the variance application by the City of Normandy  
5 Park is hereby affirmed.

6 DATED this 17<sup>th</sup> day of September, 1979.

7 SHORELINES HEARINGS BOARD

8   
9 DAVID AKANA, Chairman

10   
11 CHRIS SMITH, Member

12   
13 ROBERT S. DERRICK, Member

14   
15 JAMES S. WILLIAMS, Member